

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,)	
)	
Plaintiff,)	
)	
v.)	ID No.: 9811014143
)	
ANDRE R. THOMAS,)	
)	
Defendant.)	

Submitted: November 26, 2008
Decided: January 12, 2009

**Upon Defendant's Second Motion for Postconviction Relief –
*SUMMARILY DISMISSED.***

1. After a jury trial, Defendant was found guilty on July 25, 2000 of Reckless Endangering First Degree (three counts) and related charges, including weapons offenses. The State filed a motion to declare Defendant a habitual offender on July 28, 2000, which the court granted. And, on December 1, 2000, the court sentenced Defendant to a long prison term, including many years of mandatory imprisonment.

2. Defendant filed a direct appeal to Delaware's Supreme Court, but his conviction was affirmed and the mandate was received on March 8, 2002.¹

¹ *Thomas v. State*, 791 A.2d 751 (TABLE) (ORDER).

3. On November 19, 2004, Defendant filed his first motion for postconviction relief, which the court summarily dismissed on February 17, 2005.² The dismissal was affirmed on May 4, 2005 and the mandate was filed on May 25, 2005.³

4. On August 18, 2008, Defendant filed this, his second motion for postconviction relief. Defendant submitted a supplemental letter dated October 2, 2008, which was docketed on November 26, 2008.

5. The Prothonotary properly referred the motion.⁴ Upon preliminary review, it appears that the motion is subject to summary dismissal for several reasons.

6. The motion is barred under Superior Court Criminal Rule 61(i)(1) because it was filed more than one year after the judgment of conviction became final and it does not assert a retroactively applicable right that was recognized after the judgment became final.

7. The motion is barred under Superior Court Criminal Rule 61(i)(2) because it asserts claims that should have been made during the proceedings leading to the conviction, on direct appeal, or in Defendant's first motion for postconviction

² *State v. Thomas*, 2005 WL 388270, Silverman, J. (Del. Super).

³ *Thomas v. State*, 872 A.2d 960 (TABLE) (ORDER).

⁴ Super. Ct. Crim. R. 61(d)(1).

relief.⁵ Otherwise, Defendant's claims have been formally adjudicated in those proceedings.⁶

8. Specifically, through this motion, Defendant seeks to re-litigate his claim that he should not have been allowed to represent himself and he should have been allowed to introduce evidence concerning his mental condition. Those claims have been litigated extensively and they are the subjects of several decisions.⁷

9. Defendant attempts to overcome Rule 61's bars to relief by invoking the "colorable claim" exception under Rule 61(i)(5). That exception, however, does not apply to claims that are procedurally barred under Rule 61(i)(4). After a claim has been litigated unsuccessfully, the adverse ruling precludes the claim's relitigation.

10. If the court could further consider whether Defendant's conviction and sentence are just, it would reiterate that Defendant, while under the influence of drugs, trashed a hotel room and fired a shot through the door as police officers attempted to enter the room. While Defendant could point to small things in his favor, the State's evidence as to what Defendant did was overwhelming. Defendant's claim, as he bluntly puts it, that he has "been screwed" has no support

⁵ See *Younger v. State*, 580 A.2d 552, 554-55 (Del. 1990).

⁶ Super. Ct. Crim. R. 61(i)(4); see *Maxion v. State*, 686 A.2d 148, 150 (Del. 1996).

⁷ See *supra* notes 1-3 and *State v. Thomas*, 2000 WL 33113941, Silverman, J. (Del. Super. Oct. 27, 2000).

except when it comes to his sentence's length. But, the long sentence involves mandatory prison time based on Defendant's status as a habitual offender and the particular nature of his crimes.

For the foregoing reasons, after preliminary review, Defendant's second motion for postconviction relief is **SUMMARILY DISMISSED**. At this point, Defendant's best hope for sentence reduction comes through 11 *Del. C.* §4217.

IT IS SO ORDERED.

/s/ Fred S. Silverman

Judge

cc: Prothonotary
Paul R. Wallace, Esquire
Andre R. Thomas